

## **THE HONORABLE ROBERT J. BRYAN**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

**SHANI BERRY, and GERALD. R.  
TARUTIS, as guardian ad litem for minor  
A.B.,**

**NO. 3:12-cv-05076-RJB**

**Plaintiffs,**  
**vs.**

## **DECLARATION OF DANIEL GORDY**

**WAL-MART STORES, INC., and  
SPAULDING LIGHTING,**

## Defendants.

Comes Now Daniel Gordy, and under penalty of the Laws of Perjury of the State of Washington, declares:

1. I am over the age of eighteen, and competent to testify upon personal knowledge to the facts herein. I am an attorney representing the interests of AB, a minor, through the plaintiff, GAL Gerald Tarutis.
  2. The facts set forth in Plaintiff's Response in Opposition to Wal-Mart's Motion for Summary Judgment with respect to the incident of October 1, 2008 are based upon the pleadings, discovery, and review of the file in my possession. The statements regarding Wal-Mart's inspection practices for the area; condition of the scene; destruction or loss of important evidence are based upon Wal-Mart's Responses to Plaintiff's First Set of Interrogatories and Requests for Production. A true and correct copy of Wal-Mart's Responses to the Interrogatories are attached to the Declaration of Virginia Leeper.

**DECLARATION OF DANIEL GORDY  
3:12-cv-05076-RJB**

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3. Statements regarding injuries and treatment for AB are based upon the treatment records which have been produced, and upon Tarutis Responses to Spaulding Lighting's First Interrogatories and requests for Production, attached to the declaration of Virginia Leeper.
  4. A true and correct copy of Tarutis' Responses to Wal-Mart's First Requests for Admission is attached hereto as Exhibit A. Wal-Mart's Requests for Admission are denied. Wal-Mart sent identical Requests to Shani Berry who has not responded.
  5. My Notice of Appearance in this matter was filed on November 13, 2012. At that time, I had not yet seen the case file of the prior attorney, Teri Rideout, Esq. I had made arrangements with Ms. Rideout to obtain her file on November 15, 2012. I did obtain her file on November 15, 2012.
  6. Ms. Rideout withdrew from representation of both AB (through prior GAL Cheryl Robbins-Berg, Esq.), and of Shani Berry on July 13, 2012. From the file, it does not appear that Initial Disclosures had been submitted on AB's behalf (due April 23, 2012).
  7. AB was unrepresented following withdrawal and until my Appearance on November 13, 2012. Disclosure of Expert Testimony was due on September 26, 2012. No disclosure was submitted on AB's behalf. The file does not indicate that prior counsel had identified, retained, or disclosed experts for the claims on behalf of AB. Because the disclosure date had passed before I appeared in this matter, there has been no opportunity for me to obtain and disclose additional necessary expert testimony on behalf of AB's claims.
  8. The date that discovery must be completed was November 26, 2012. A party has at least thirty days to respond to written discovery. I appeared with only 12 days left for discovery. Because there was insufficient time, I had no opportunity to serve additional written discovery, or follow up on issues pertaining to Wal-Mart's responses to prior discovery within the case schedule deadlines. The deadline for Discovery Motions had lapsed on November 5, 2012. Similarly, there was insufficient time to identify and schedule any witnesses for depositions within the case schedule deadlines.
  9. I have had discussions with potential expert witnesses. Should the court grant additional time, I am prepared to obtain testimonial evidence directly relevant to Wal-Mart's Motion for Summary Judgment.? The evidence will clarify the material facts which remain in reasonable dispute, and provide evidence necessary for establishment of claims at trial.

10. Beyond the evidence to be obtained for purposes of this motion, time and opportunity is necessary so that evidence necessary to establish the claims for AB may be obtained and disclosed. This had not previously been accomplished.

**Signed at Seattle, Washington on this 14<sup>th</sup> day of January, 2013.**

# Daniel Gordy & Associates PLLC

/s/ Daniel Gordy

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**DECLARATION OF DANIEL GORDY  
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**CERTIFICATE OF SERVICE**

I, Sue Phommachit, am employed by law firm of Daniel Gordy & Associates, PLLC,  
2125 Western Avenue, Suite 204, Seattle, WA 98121, appearing as attorney of record for the  
plaintiff, Gerald R. Tarutis, guardian ad litem for the minor AB, herein.

I caused a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/EMF system, which will send notification of such filing to the following:

Jose E. Gaitán, WSBA No. 7347  
Virginia Leeper, WSBA No. 10576  
Cecilia Rikard, WSBA No. 43832  
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**Attorneys for Defendant**  
**Wal-Mart Stores Inc.**

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**Attorneys for Defendant Spaulding  
Lighting, a division of Hubbell  
Lighting, Inc.**

I certify under penalty of perjury of the laws of the State of Washington that I sent, on January 14, 2013, the document as referenced below as follows:

Postage prepaid, first-class mail; and email to:

Shani Berry  
5908 Evergreen Way, Apt. C  
Everett, WA 98203-6033  
[Shani.berry@hotmail.com](mailto:Shani.berry@hotmail.com)

Signed at Seattle, Washington on this 14<sup>th</sup> day of January, 2013.

Son Phu

Sue Phommachit [sue@gordylegal.com]

Daniel Gordy Associates PLLC

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